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April 25, 1996

EX PARTE

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

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APR 25 1996

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

RE: Commission Initiates Proceeding to Implement Interconnection Provisions of
Telecommunications Act of 1996 (CC Docket No. 96-98)

Dear Mr. Caton:

On Tuesday, April 23, 1996, David Gross and I, on behalf of AirTouch Communications, met with Rosalind Allen, Sandra Danner, Barbara Esbin, David Krech, Lisa Warner, and Jennifer Warren of the Wireless Bureau to discuss the attached material. Please associate with the above-referenced proceeding.

Two copies of this notice are being submitted to the Secretary in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me at 202-293-4960 should you have any questions or require additional information concerning this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Q. Abernathy", is written over a printed name.

Kathleen Q. Abernathy

Attachments

cc: Rosalind Allen
Sandra Danner
Barbara Esbin
David Krech
Lisa Warner
Jennifer Warren

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

AirTouch Communications, Inc.

Ex Parte Presentation **WT Docket No. 96-6**

April 23, 1996

Public Interest Benefits of Permitting Flexible Service Offerings by CMRS

Allowing CMRS licensees to provide fixed services -- such as wireless local loop, wireless PBX, portable facsimile services and wireless local area networks -- provides public interest benefits.

1. Promotes efficient use of spectrum and encourages development of new technologies and services.
2. Promotes competition within the local loop.
3. Enhances spectrum efficiency by allowing the licensee the discretion to meet consumer needs.

PCS and Cellular Services Must Be Accorded Similar Regulatory Treatment

- FCC has made clear that PCS licensees will provide a variety of fixed and mobile services.
- Even given these fixed uses, PCS was classified by FCC and Congress as a CMRS service subject to Section 332 regulation.
- All CMRS licensees -- cellular, narrowband PCS, and paging licensees -- should be permitted the same flexibility to offer fixed services as PCS licensees.
- By requiring that all auxiliary services provided by CMRS licensees be included within the definition of mobile services, the FCC is acting consistent with regulatory parity provisions set forth in Section 332 of the Communications Act.

Regulatory Classification of CMRS Fixed Services

- Section 332 of the Communications Act sets forth the regulatory scheme for CMRS providers.
- States can petition the FCC for authority to regulate CMRS providers, but only when a CMRS provider becomes a “replacement for landline telephone exchange service for a substantial portion of the telephone landline exchange service within such state.” See Section 332(c)(3).
- Until CMRS reaches point of being a substitute for landline service across a given state, the service is not subject to state regulation nor should any additional FCC regulatory requirements be imposed.

Regulatory Classification of CMRS Fixed Services (Cont'd)

- Most recently Congress exempted CMRS providers from local exchange carrier regulation, including number portability and dialing parity requirements, by expressly stating that CMRS providers are not local exchange carriers under the definition in the Telecommunications Act of 1996.
 - This was with full knowledge that PCS licensees are permitted to offer various fixed services.
 - FCC does have discretion, however, to conclude that certain CMRS providers should be included in the definition of local exchange carrier.
- Even if FCC should decide that fixed wireless services must be regulated differently than CMRS, the FCC should use its forbearance authority under new Section 10(a) of the Act to eliminate regulations that harm competition.

Regulatory Classification of CMRS Fixed Services (Cont'd)

- Forbearance is appropriate because competition in the local loop from wireless providers will assure that rates charged are just, reasonable, and not unreasonably discriminatory.
- Forbearance would also serve the public interest because fixed wireless service will provide new, significant competition in the local loop.

or under direct or indirect common control with such carrier, or (3) any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities, located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) would be applicable except for furnishing interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico; except that sections 201 through 205 of this Act, both inclusive, shall, except as otherwise provided therein, apply to carriers described in clauses (2), (3), and (4).

SEC. 3. [47 U.S.C. 153] DEFINITIONS.

For the purposes of this Act, unless the context otherwise requires—

(a) "Wire communication" or "communication by wire" means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

(b) "Radio communication" or "communication by radio" means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

(c) "Licensee" means the holder of a radio station license granted or continued in force under authority of this Act.

(d) "Transmission of energy by radio" or "radio transmission of energy" includes both such transmission and all instrumentalities, facilities, and services incidental to such transmission.

(e) "Interstate communication" or "interstate transmission" means communication or transmission (1) from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, (2) from or to the United States to or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or (3) between points within the United States but through a foreign country; but shall not, with respect to the provisions of title II of this Act (other than section 223 thereof), include wire or radio communication between points in the same State, Territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission.

(f) "Foreign communication" or "foreign transmission" means communication or transmission from or to any place in the United States to or from a foreign country, or between a station in the United States and a mobile station located outside the United States.

(g) "United States" means the several States and Territories, the District of Columbia, and the possessions of the United States, but does not include the Canal Zone.⁵

(h) "Common carrier" or "carrier" means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this Act; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

(i) "Person" includes an individual, partnership, association, joint-stock company, trust, or corporation.

(j) "Corporation" includes any corporation, joint-stock company, or association.

(k) "Radio station" or "station" means a station equipped to engage in radio communication or radio transmission of energy.

(l) "Mobile station" means a radio-communication station capable of being moved and which ordinarily does move.

(m) "Land station" means a station, other than a mobile station, used for radio communication with mobile stations.

(n) "Mobile service" means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (1) both one-way and two-way radio communication services, (2) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (3) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding.

(o) "Broadcasting" means the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations.

(p) "Chain broadcasting" means simultaneous broadcasting of an identical program by two or more connected stations.

(q) "Amateur station" means a radio station operated by a duly authorized person interested in radio technique solely with a personal aim and without pecuniary interest.

(r) "Telephone exchange service" means service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge.

(s) "Telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

(t) "State commission" means the commission, board, or official (by whatever name designated) which under the laws of any State